Moder patent of a tampon in the claimed kit having a core with an absorbent capacity of less than 6 grams. The examiner has tried to construe the term "syngyna absorbent capacity of less than 6 grams" in Claim 1 to mean "having the capability of absorbing less than 6 grams." This reading of Claim 1 and of the Moder patent ignores the evidence of record pertaining to the proper meaning of the term "syngyna absorbent capacity." For example, the regulations contained in 21 CFR § 801.430 are evidence of the meaning of this term which the Office Action completely ignores in arriving at the improper meaning of the claim applied in the rejections. These regulations, among other evidence previously submitted make clear that the syngyna absorbent capacity tests the **capacity** of the tampon– i.e. the test is run to the point where the tampon cannot absorb any more fluid.

Based upon this and the other evidence of record, it would be clear to one of skill in the art that a tampon having a syngyna absorbent capacity of less than 6 grams is not the same as tampon having the "capability" of absorbing say, 3 grams, when the tampon has not yet reached its capacity as defined by syngyna absorbent capacity test. The Office Action makes no attempt to reconcile this application of Claim 1 to the Moder reference to the evidence of record regarding the proper meaning of the term "syngyna absorbent capacity." Rather, the Office Action simply assumes that the claim only specifies a tampon having the "capability" of absorbing less than 6 grams. Using this improper definition of the claim, the Moder reference is found to be anticipated.

While it is indeed true that the Examiner must give a claim its broadest reasonable interpretation for purposes of examination, the Examiner may not ignore evidence of the clear meaning of the claim as is the case with the instant Office Action. In this case, the Examiner has pointed to no evidence that one of skill in the art would interpret the claim in the manner indicated in the Office Action. In fact, the evidence of record previously submitted by the applicants shows just the opposite. The term "syngyna absorbent capacity" has a meaning in the art, and that meaning is not at all consistent with the reasoning for anticipation laid out in the Office Action. There is no evidence in the Moder patent that if a tampon described in Moder were allowed to absorb to the point saturation and leakage, as required by the syngyna absorbent capacity test (See, 21 CFR § 801.430(f)(2)) that it would have a syngyna test absorbent capacity of less than 6 grams. No evidence is provided in the Office Action that one of skill in the art would interpret these term in any other manner than this well-established meaning it has by virtue of 20 years of usage and regulations of the United States itself. As such, the rejection of Claim 1 under 35 U.S.C. § 102 is improper and should be withdrawn.

Similarly, Claims 2-5 which depend from Claim 1 are not anticipated by the Moder patent for the same reasons. Therefore, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 102 and to allow the claims.

Rejections Under 35 U.S.C. § 103

Claims 1,6, 8-9 and 14-20 are rejected under 35 U.S.C. § 103 as unpatentable over Moder in view of Stravitz (U.S. 6,164,442)Stravitz. These rejections are improper and should be withdrawn.

Not only do all of the rejected claims depend from Claim 1, the application of Moder to these claims is the same as made above with respect to the § 102 rejections. The Stravitz patent nowhere discloses a tampon having a syngyna absorbent capacity of less than 6 grams any more than the Moder patent does. The Office Action repeats the same position that the Stravitz tampon would have the same capability of absorbing up to six grams. There is no evidence even of this position, however. In any event, there is no disclosure pointed to for the teaching that Stravitz or Moder or the combination of the two teaches a tampon whose syngyna absorbent **capacity** (measured by the syngyna test) is less than 6 grams. Additionally, the remaining rejections are simply based upon conclusory statements that it would have been obvious to modify the references in the manner specified to arrive at the claimed invention. No suggestion or motivation or any other evidence is pointed to demonstrating why such modifications would have been obvious. Therefore, none of the § 103 rejections make out a proper *prima facie* case of obviousness.

Claims 10-13 are rejected under 35 U.S.C. § 103 as unpatentable over Stravitz in further view of Morrow (US 5,998,386). These claims also all depend from Claim 1. The cited combination of references does not overcome the deficiencies noted above with respect to the lack the claimed tampon syngyna absorbent capacity. Therefore these rejections are improper at least for the same reasons given above. The Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 103 and allow the claims.

SUMMARY

Al of the relevant rejections in the Office Action have been discussed.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and that all of the claims be allowed.

Issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

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